

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

KENNETH PARKS,

Plaintiff,

v.

MR. MCDANIEL,

Defendant.

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Case No. CV411-221

REPORT AND RECOMMENDATION

Previously in this failure-to-protect, 42 U.S.C. § 1983 case, the Court pared plaintiff Kenneth Clark's claims down to just one defendant: "Mr. McDaniel." Doc. 20, *reported at* 2012 WL 602923. Alexander Ragan McDaniel has since been served, but he moves for summary judgment on the ground that he *never* worked in Park's prison and has no knowledge of the matters alleged here.

Put another way, Parks has sued the wrong "Mr. McDaniel." Doc. 27-2 at 2. Rather than respond on the merits, Parks moves for leave to dismiss his case without prejudice to give him time to regroup, find a

lawyer, etc. Doc. 29.¹ McDaniel opposes, demanding summary judgment and dismissal with prejudice. Doc. 30.

In that Parks does not even hint at how he would find the “right” McDaniel, much less that he can rebut the summary judgment showing, the Court **DENIES** his Rule 41(a)(2) motion. Furthermore, defendant’s motion summary judgment, as evidentially supported and otherwise unopposed per Local Rules 7.5 and 56.1, should be granted, which means that this case should be **DISMISSED WITH PREJUDICE** as to this defendant.

SO REPORTED AND RECOMMENDED this 13th day of June, 2012.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

¹ Though he does not expressly cite to Fed. R. Civ. P. 41(a)(2), he in effect invokes it here.